

Amendment No. 1 to SB0314

Beavers  
Signature of Sponsor

**AMEND Senate Bill No. 314\***

**House Bill No. 1225**

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 36-3-604, is amended by deleting the section in its entirety, including all forms, and substituting the following

(a)

(1) The office of the clerk of court shall provide forms that may be necessary to seek a protection order under this part. These forms shall be limited to use in causes filed under this part and they shall be made available to all who request assistance in filing a petition. The clerk may obtain the most current forms by printing them from the web site of the administrative office of the courts.

(2) The petitioner is not limited to the use of these forms and may present to the court any legally sufficient petition in whatever form. The office of the clerk shall also assist a person who is not represented by counsel by filling in the name of the court on the petition, by indicating where the petitioner's name shall be filled in, by reading through the petition form with the petitioner, and by rendering any other such assistance as is necessary for the filing of the petition. All such petitions that are filed pro se shall be liberally construed procedurally in favor of the petitioner.

(b) The administrative office of the courts, in consultation with the domestic violence coordinating council, shall develop a "petition for orders of protection" form, an "amended order of protection" form, an "ex parte order of protection" form and such other forms as are found to be necessary and advisable. These forms shall be revised as the laws relative to orders of protection and ex parte orders of protection are amended by the general assembly. To the extent possible, the forms shall be uniform

with those promulgated by surrounding states so that Tennessee forms may be afforded full faith and credit.

(c) The administrative office of the courts shall revise the petition for an order of protection form to fully advise the respondent of the provisions of this act in language substantially similar to the following:

(1) If the order of protection is granted in a manner that fully complies with the provisions of 18 U.S.C. § 922(g)(8), the respondent is required to terminate physical possession by any lawful means, such as transferring possession to a third party who is not prohibited from possessing firearms, of all firearms that the respondent possesses within two (2) days of the granting of the order;

(2) It is a criminal offense for a person subject to an order of protection which fully complies with the provisions of 18 U.S.C. § 922(g)(8), to possess a firearm while that order is in effect; and

(3) The issuance of an order of protection may terminate or, at least, suspend the individual's right to purchase or possess a firearm.

SECTION 2. Tennessee Code Annotated, Section 36-3-606, is amended by adding the following new subsection (g):

(g) An order of protection issued pursuant to this part that fully complies with the provisions of 18 U.S.C. § 922(g)(8), shall contain the disclosures set out in § 36-3-625(a):

SECTION 3. Tennessee Code Annotated, Title 36, Chapter 3, Part 6, is amended by adding the following new section:

Section 36-3-625.

(a) Upon issuance of an order of protection that fully complies with the provisions of 18 U.S.C. § 922(g)(8), the order shall include on its face the following disclosures:

(1) That the respondent is required to dispossess himself or herself by any lawful means, such as transferring possession to a third party who is not prohibited from possessing firearms, of all firearms the respondent possesses within two (2) days of the issuance of the order;

(2) That the respondent is prohibited from possessing a firearm for so long as the order of protection or any successive order of protection is in effect, and may reassume possession of the dispossessed firearm at such time as the order expires or is otherwise no longer in effect; and

(3) Notice of the penalty for any violation of this section and § 39-17-1307(e).

(b) The court shall then order and instruct the respondent:

(1) To terminate his or her physical possession of the firearms in the respondent's possession by any lawful means, such as transferring possession to a third party who is not prohibited from possessing firearms, within two (2) days;

(2) To complete and return the "Affidavit of Firearm Dispossession" form created pursuant to subsection (e), which the court may provide the respondent or direct the respondent to the administrative office of the courts website; and

(3) That if he or she possesses firearms as business inventory or that are registered under the National Firearms Act, there are additional statutory provisions which may apply and shall include these additional provisions in the content of the order.

(c) Upon issuance of the order of protection, its provisions and date and time of issuance shall be transmitted to the sheriff and all local law enforcement agencies in the county where the respondent resides.

(d) When the respondent is lawfully dispossessed of firearms as required by this section, the respondent shall complete an "Affidavit of Firearms Dispossession" form

created pursuant to subsection (e) and return it to the court issuing the order of protection.

(e) The “Affidavit of Firearms Dispossession” form shall be developed by the Domestic Violence State Coordinating Council, in consultation with the administrative office of the courts. Upon completion, the form shall be posted on the web page of the administrative office of the courts where it can be copied by respondents or provided to them by the court or the court clerk.

(f) In determining what a lawful means of dispossession is:

(1) If the dispossession, including but not limited to, the transfer of weapons registered under the National Firearms Act that requires the approval of any state or federal agency prior to the transfer of such firearm, the respondent may comply with the dispossession requirement by having the firearm or firearms placed into a safe or similar container which is securely locked and to which the respondent does not have the combination, keys or other means of normal access.

(2) If the respondent is licensed as a federal firearms dealer or a responsible party under a federal firearms license, the determination of whether such an individual “possesses” firearms that constitute the business inventory under such federal license shall be determined based upon the applicable federal statutes or the rules, regulations and official letters, rulings and publications of the bureau of alcohol, tobacco, firearms and explosives. The order of protection shall not require the surrender or transfer of any such inventory if there are one or more individuals who are responsible parties under the federal license who are not the respondent subject to the order of protection.

(g) A firearm subject to this section shall not be forfeited as provided in § 39-17-1317, unless the possession of the firearm prior to the entry of the order of protection constituted an independent crime of which the respondent has been convicted or the firearms are abandoned by the respondent.

(h)

(1) It is an offense for a person subject to an order of protection that fully complies with the provisions of 18 U.S.C. § 922(g)(8), to knowingly fail to surrender or transfer all firearms the respondent possesses as required by this section.

(2) A violation of subdivision (h)(1) is a Class A misdemeanor and each violation shall constitute a separate offense.

(3) If the violation of subdivision (h)(1) also constitutes a violation of § 39-13-113(h) or § 39-17-1307(e), the respondent may be charged and convicted under any or all such sections.

SECTION 4. Tennessee Code Annotated, Section 39-13-111, is amended by adding the following new subdivision (c)(3):

(3) A person convicted of a violation of this section shall be required to terminate, upon conviction, possession of all firearms that the person possesses as required by § 36-3-625.

SECTION 5. Tennessee Code Annotated, Section 39-13-113, is amended by adding the following as a new subsection (h):

(h)

(1) It is an offense and a violation of an order of protection for a person to knowingly possess a firearm while an order of protection that fully complies with the provisions of 18 U.S.C. § 922(g)(8), is entered against that person and in effect, or any successive order of protection containing the language of § 36-3-606(g) and that fully complies with the provisions of 18 U.S.C. § 922(g)(8), is entered against that person and in effect.

(2) For purposes of this subsection, the determination of whether a person “possesses” firearms shall be based upon the factors set out in § 36-3-625(f) if the firearms constitute the business inventory or are subject to the National Firearms Act.

(3) A violation of this subsection (h) is a Class A misdemeanor and each violation constitutes a separate offense.

(4) If a violation of subsection (h) also constitutes a violation of § 36-3-625(h), or § 39-17-1307(e), the respondent may be charged and convicted under any or all such sections.

SECTION 6. Tennessee Code Annotated, Section 39-17-1307, is amended by adding the following new subsection (e):

(e)

(1) A person commits an offense who possesses a firearm, as defined in § 39-11-106(a), and:

(A) Has been convicted of a misdemeanor crime of domestic violence as defined in 18 U.S.C. § 921, and is still subject to the disabilities of such a conviction;

(B) Is, at the time of the possession, subject to an order of protection that fully complies with the provisions of 18 U.S.C. § 922(g)(8); or

(C) Is prohibited from possessing a firearm under any other provision of state or federal law.

(2) If the person is licensed as a federal firearms dealer or a responsible party under a federal firearms license, the determination of whether such an individual “possesses” firearms that constitute the business inventory under such federal license shall be determined based upon the applicable federal statutes or the rules, regulations and official letters, rulings and publications of the bureau of alcohol, tobacco, firearms and explosives.

(3) For purposes of this section, a person does not possess a firearm, including but not limited to, firearms registered under the National Firearms Act, if the firearm is in a safe or similar container which is securely locked and to which the respondent does not have the combination, keys or other means of normal access.

(4) A violation of subdivision (e)(1) is a Class A misdemeanor and each violation constitutes a separate offense.

(5) If a violation of subdivision (e)(1) also constitutes a violation of § 36-3-625(h) or § 39-13-113(h), the respondent may be charged and convicted under any or all such sections.

SECTION 7. Tennessee Code Annotated, Section 39-17-1352, is amended by adding the following new subdivisions to subsection (a):

( ) Has been convicted of domestic assault as defined in § 39-13-111, or any other misdemeanor crime of domestic violence and is still subject to the disabilities of such a conviction;

( ) Is subject to a current order of protection that fully complies with the provisions of 18 U.S.C. § 922(g)(8).

SECTION 8. This act shall take effect July 1, 2009, the public welfare requiring it.